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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Clairtex Corporation**

Serial No. 75/456,352

Bernard Malina of Malina & Wolson for Clairtex Corporation.

Scott M. Oslick, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Seeherman, Wendel and Rogers, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Clairtex Corporation has appealed from the final refusal of the Trademark Examining Attorney to register BLR as a trademark for "slacks, trousers, shirts, blouses, dresses, shorts, sweaters, tops, underpants, bras, socks, suits, hats and bathing suits."¹ Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's mark so

¹ Application Serial No. 75/456,352, filed March 25, 1998, and asserting a bona fide intention to use the mark in commerce.

resembles the mark shown below, (with NYC disclaimed) and registered for scarves, wraps, capes and pocket squares² that, if used on applicant's identified goods, would be likely to cause confusion or mistake or to deceive.

The appeal has been fully briefed; an oral hearing was not requested.³

In determining whether there is a likelihood of confusion between two marks, we must consider all relevant factors as set forth in **In re E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis under Section 2(d), two of the most important considerations are the similarities or dissimilarities between the marks and the similarities or dissimilarities between the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

² Registration No. 1,879,864, issued February 21, 1995.

³ In its appeal brief applicant indicated that it would be requesting an oral hearing by separate notice, as required by Trademark Rule 2.142(e)(1), but no such request was ever received.

In this case, we find that the marks are sufficiently different that, even if they were used on related goods, confusion would not be likely. See **Kellogg Co. v. Pack'em Enterprises Inc.**, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) ("We know of no reason why, in a particular case, a single duPont factor may not be dispositive").

There is a dispute about the commercial impression of the cited mark. The Examining Attorney contends that it is for the letters B L-R, written above the letters NYC. There is no disagreement that NYC, which is disclaimed, is a reference to New York City. The Examining Attorney asserts that the preceding line is for the initials B L R, noting that registrant's name is Bernardo Laniado-Romero. Although this may well be the derivation of the mark, we must determination the issue of likelihood of confusion based on how consumers will view the mark, not on the intention of the registrant. Nor does the fact that Office personnel described the mark as "BL-R NYC" in the Office's X-search records establish that consumers will perceive the mark in this way. In this case, there is nothing in the record that would indicate that consumers would understand the registrant's mark to be his initials. For example, there is no evidence that the registrant uses the mark in conjunction with his name, or that his name appears on his

products, such that consumers would make a connection between the mark and the initials BLR.

As a result, we agree with applicant that, rather than the letters B L-R, the mark is more likely to be viewed as the number "3" followed by "L-R." Although the "L" and "R" and "NYC" in the mark are depicted in relatively normal "handwritten" capital letters, the first element is shown in such a different script that consumers would not readily perceive it to be a "B." Accordingly, the commercial impression of the registrant's mark is far different from that of the letters or initials BLR.

We recognize that applicant has depicted its mark in a typed drawing, and therefore the protection it seeks is not limited to a specific form. See **Phillips Petroleum Co. v. C. J. Webb, Inc.**, 442 F.2d 1376, 170 USPQ 35 (CCPA 1971). However, because an application depicts a mark in typed capital letters, this does not mean that the mark must be considered to encompass all possible forms, no matter how extensively stylized. Rather, when a drawing in an application depicts a mark in typed capital letters, we must, in deciding the issue of likelihood of confusion, consider all reasonable manners in which the mark could be depicted. See **Jockey International Inc. v. Mallory &**

Ser. No. 75/456,352

Church Corp., 25 USPQ2d 1233 (TTAB 1992) and cases cited therein.

In this case, it is not reasonable to consider applicant's mark BLR to encompass a stylization similar to that in the cited registration, where the first element looks far more like the numeral "3" than it does like the letter "B."

Decision: The refusal of registration is reversed.